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DON DUNSTAN HUMAN RIGHTS ORATION:

SQUANDERING THE LEGACY

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How it was

I was born in the year Robert Menzies became Prime Minister of Australia. His figure dominated the landscape during my school years. My parents, and most of their friends, kept the Liberal government in power until my final year at university.

He came to government after Australia had suffered the agonies of war and the strictures of the great depression. The nation stumbled into a new and dangerous

world, one marked by the great ideological divide of the Cold War. His avuncular figure offered security and hope in an uncertain time.

Menzies' rival, Ben Chifley, dreamed of larger things:

"I try to think of the Labor movement, not as putting an extra sixpence into somebody's pocket, or making somebody Prime Minister or Premier, but as a movement bringing something better to the people, better standards of living, greater happiness to the mass of the people. We have a great objective – the light on the hill – which we aim to reach by working for the betterment of mankind not only here but anywhere we may give a helping hand."

Chifley was Prime Minister from 1945 to 1949. For most of that time, his deputy was H.V. Evatt, who in 1948 was elected president of the UN General Assembly. He remains the only Australian to have held that post. Evatt presided over the UN's adoption and proclamation of the Universal Declaration of Human Rights on 10 December 1948, followed by the Geneva Convention and Genocide Convention.

Chifley's vision explains why, despite its remoteness and its small population, Australia took a leading role in the formulation of the great human rights conventions of the post-war period. That process, inspired by events of the preceding decade which had "shocked the conscience of mankind" gave expression to a widely held view that the genocide of one group affected all members of the human family, that some rights were inherent in the condition of humanity, and that there were many in the world so vulnerable and powerless that the rest had to care for them without regard to national boundaries. It was an idea of great reach. Australia played an admirable role in those days of hope. It not only supported the adoption of the Declaration, it advocated that the rights enshrined in the Declaration should be enforceable, not merely a statement of hope or principle.

When Menzies found finer garments as Warden of the Cinque Ports, the mantle of power fell by turns on smaller and smaller shoulders until it was inevitable that the Labor Party must win government. The process was greatly assisted by the emergence of a towering figure in the Labor Party. Arthur Calwell had always looked like a badly minted version of Spencer Tracey and never had a chance. Gough Whitlam on the other hand was occasionally referred to as Yaweh and never suggested a correction.

After Menzies and Whitlam came Fraser. Three emperors in turn, each ruling after his own fashion: earth, fire and stone.

Australian values

Through all of this, there were abiding values which most people would recognise as the essence of the Australian character: mateship, generosity, openness and above all the idea of a fair go.

The idea of a fair go is one of the most endearing and enduring of Australian characteristics. From the earliest times, it seems to have been part of our view of the world that, since we are all broadly equal in worth, we should all be given an equal chance. While some of us suffer from natural disadvantages of character or circumstance, everyone should still get a fair go. At the risk of gross over-simplification, the idea of a fair go infuses the Universal Declaration of Human Rights: at one level, it gives detailed expression to the same ideal of equal fairness. These features of our national character have been with us so long that we take them for granted as part of the fabric of our society; as the starting point for whatever vision of the future we may conceive.

How it is

In 1996, it all went wrong. In the time of Dickens, John Howard might have aspired to be the Parish beadle. He has all the right qualifications: limited horizons, antiquarian values, a narrow vision, and a taste for harsh rules rigidly enforced. He came to the Lodge with a vision which looked backwards to the time before Menzies gained power. In many ways, his world view makes Menzies seem progressive.

Although Menzies passionately hated Communism, and did his best to make membership of the Communist Party illegal, he sought to do it by orthodox legal means. He never, so far as I am aware, lost his instinctive feel for the rule of law.

By contrast, Mr Howard's pre-eminent qualities are consummate political skill and a blind desire to achieve his political objectives regardless of the method. He has no taste for Human Rights. His approach to government is hypocritical at best and dishonest at worst.

Dishonesty has become a hallmark of the Howard government.

In 1998, ministers at the highest levels conspired to breach the provisions of Howard's Workplace Relations Act, in order to achieve reform of the waterfront.

The shabbiness of the whole transaction was quickly exposed and defeated, but Howard was re-elected later that year and gave Reith a promotion for his corrupt role in the affair.

In late 2001, the government falsely alleged that some refugees had thrown their children overboard as they attempted to reach Australia. It is hard to imagine a more terrible allegation to be levelled at a parent. There was no evidence to support it. Long after Mr Howard and Mr Ruddock knew the story was untrue, they persisted in encouraging belief in it. They used it to steal an election win. Their conduct created a new moral low point in Australian public life. Australia's support for America's invasion of Iraq was likewise built on the lie that Iraq had weapons of mass destruction available for swift deployment.

What is interesting in the growing catalogue of lies by senior politicians is the apparent indifference of the public: when the "children overboard" story was exposed as a lie – one fostered by Howard, Ruddock and Reith – there was no perceptible public response. We have come to expect that the Howard team will lie to us, and it seems that we do not mind. This is deeply mysterious and disturbing.

Tampa, refugees and the collapse of values

Then there are lies on a grand scale: that asylum seekers are 'illegal'; that Australia treats them 'with the decency for which we are well known'; that the government values human rights; that asylum seekers are an issue of 'border protection'.

The arrival of the Tampa in Australian waters was misrepresented to the public as a threat to our national sovereignty. The people on Tampa were rescued at the request of the Australian government. Most of them were terrified Hazaras from Afghanistan, fleeing the Taliban. The Taliban's regime was so harsh that, just a couple of months later, we helped the Americans blast it back to the Stone Age. The idea that 438 terrified, persecuted men, women and children constitute a threat to national sovereignty is too bizarre to warrant discussion.

The Prime Minister revived his flagging prospects for re-election by using the SAS to keep those people from safety. The success of that miserable enterprise is a symptom of a terrible poison in this nation. Our vision is now so clouded that a human rights problem is misrepresented as a threat to national sovereignty; that

compassion is now seen as weakness; that dissent is a mark of the newly-despised elitism.

Australia's recent treatment of refugees which, since Tampa, the Australian government has dressed up as "border protection" violates all the values we once shared.

Let me illustrate the problem with three recent cases.

Indefinite detention

The Universal Declaration of Human Rights is the most widely accepted international convention in human history. Most countries in the world are parties to it. Article 14 provides that every person has a right to seek asylum in any territory to which they can gain access. Despite that universally accepted norm, when a person arrives in Australia without prior permission and seeks asylum, we lock them up.

The *Migration Act* provides for the detention of such people until they are either given a visa or removed from Australia. In practice, this means that human beings – men, women and children innocent of any crime – are locked up for months or, in many cases, years.

They are held in conditions of shocking harshness. The United Nations Human Rights Commission has described conditions in Australia's detention centres as "offensive to human dignity". The United Nations Working Group on Arbitrary Detention has described Australia's detention centres as "worse than prisons" and observed "alarming levels of self-harm". Furthermore, they have found that the detention of asylum seekers in Australia contravenes Article 9 of the International Covenant on Civil and Political Rights, which bans arbitrary detention.

The delegate of the United Nations Human Rights Commissioner who visited Woomera in 2002 described it as "a great human tragedy". Human Rights Watch and Amnesty International have repeatedly criticised Australia's policy of mandatory detention, and the conditions in which people are held in detention.

In short, every responsible human rights organisation in the world has condemned Australia's treatment of asylum seekers. Only the Australian government and the Australian public are untroubled by our treatment of innocent, traumatised people who seek our help. If, by a quirk of geography, we were eligible for membership of

the European Union, we would be excluded because of our treatment of asylum seekers.

Images of steel palisade fences and glittering coils of razor wire have occasionally grabbed the front pages of metropolitan newspapers. Perhaps in future ages they will attain the same iconic status as Ned Kelly's armour with this difference: that those inside are certainly brave and possibly heroes, but they are not criminals.

Mr Ruddock and Mr Howard have made it clear that the mandatory detention system, and the iniquitous Pacific Solution, are designed to "send a message". This decodes as: we treat innocent people harshly to deter others. The punishment of innocent people to shape the behaviour of others is utterly inconsistent with Christian teaching, and indeed with most philosophies. If Mr Howard and Mr Ruddock claim to be practising Christians, they should be condemned as hypocrites who have betrayed their faith.

Lock them up for ever

Mr al Masri was a Palestinian from the Gaza Strip. He arrived in Australia in June 2001 and was placed in Woomera Detention Centre. He applied for a protection visa. It was refused and he asked to be returned to the Gaza Strip. Although Mr al Masri was able to produce a passport, officers of the Department of Immigration were unable to return him, because they could not get permission for his entry to the Gaza Strip. The Palestinians, it seems, thought he was an Israeli spy. Israel, for its part, did not want him. Five months passed and Mr al Masri remained locked up in Woomera. He applied to the court for an order releasing him from detention. Not surprisingly, the government resisted that application.

Here, I need to say something about the constitutional basis for mandatory detention under the Migration Act. The Australian Constitution entrenches the separation of powers. The three powers of governments – legislative, executive and judicial – are vested in the three different arms of government. The powers of one arm of government may not be exercised by another arm of government. Accordingly, the Parliament, established under Chapter I cannot exercise the powers of the executive government which is established under Chapter II. Courts established under Chapter III of the Constitution may not pass laws.

Punishment is central to the judicial power. Accordingly, only a Chapter III court can inflict punishment on a person. Locking a person up is generally regarded as punishment. However, the High Court has acknowledged that there are circumstances where detention is necessary for the discharge of an executive function. In those limited circumstances detention, imposed directly and without the intervention of a Chapter III court, will be constitutionally valid. This holds good only as long as the detention goes no further than can reasonably be seen as necessary to the executive purpose to which it is ancillary.

The Migration Act requires that all unlawful non-citizens should be detained, and should be held in detention until granted a visa or removed from the country.

Mr al Masri's case presented a conundrum: he had been refused a visa but he could not be removed. The question then was: should he remain in detention?

For the sake of accuracy, it is worth quoting a portion of the Judgment in al Masri's case:

"Theoretically at least, detention might continue for the rest of a person's life and the Solicitor-General did not shrink from that possibility, whilst contending that in the real world such a thing would not happen."

Put simply, the Solicitor-General, on behalf of the Minister for Immigration, had submitted to the court that, if it came to the point, Mr al Masri could be locked up for the rest of his life, although he is innocent of any offence.

To lock up an innocent person for the rest of their natural life is a chilling possibility. For a government to contend for that result in all seriousness is so alarming that it is difficult to associate it with contemporary Australia. The Judgment from which I have just quoted was delivered on the 15th April, 2003. The court rejected the government's argument, and said that the Minister could not hold a person in detention for the rest of his life. The government is challenging the decision.

<u>Harsh conditions</u>

There are other aspects of the mandatory detention system which bring into sharp relief the attitude of the current government to human rights issues.

Woomera opened for business in December 1999. It was closed in September 2002. At its peak, it accommodated nearly three times as many people as it was designed for. Conditions in Woomera – physically and psychologically – were shocking. Until public pressure forced some measure of improvement, a woman

having her period would have to write out an application form for sanitary pads and hand it to the nurse. She would then be given one pack. If she needed more than that she would have to write another form and explain why she used more than one pack..

Children held in Woomera typically developed enuresis: a colleague of mine described the haunting image of a 12 year old Afghan girl wandering around aimlessly in the dust at Woomera, wearing a nappy. On enquiry, it emerged that the child was incontinent from the stress of detention. Desperate acts of self-harm were common. Children very quickly internalise the reason for their detention, with a simple logic which damages them for life: "they lock up bad people; I am locked up; so I must be a bad person".

The use of solitary confinement was common. The detention environment has been implicated as a direct contributor to overwhelming psychological distress. This is reflected in the suicide rate in detention centres, which is conservatively estimated at 3–17 times that in the Australian community.[1] Several studies show that, after 12 months indetention, 100% of detainees suffer from one or more psychological disorders.[2]

On several notorious occasions, detainees escaped from Woomera, only to be recaptured shortly afterwards. They were charged with escaping from immigration detention. The defence to those charges goes like this: detention under the Migration Act is only valid so long as it does not constitute punishment. It will constitute punishment if it goes beyond what is reasonably necessary for the administrative purpose of processing a visa application and (if necessary) removal from the country. Conditions in Woomera go beyond anything that could be reasonably necessary for the purpose of visa processing and removal from the country. Accordingly, detention in such harsh conditions is not detention of the sort authorised by the Act, with the result that what they escaped from was not "immigration detention" but some other, unauthorised, condition.

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[1] *Medical Journal of Australia* September 2003.

[2] Aamer Sultan and Kevin O'Sullivan *Medical Journal of Australia* 2001; 175: 593-596; Steele and Silove 2001; *Medical Journal of Australia* 2001175: 596-599

In order to produce evidence of the conditions at Woomera, subpoenas were issued to the Department of Immigration and ACM – the private prison operators who run all of Australia's immigration detention centres. The Department and ACM sought to have the subpoenas set aside. First, they said that the subpoenas were oppressive in their operation. For example, they said that it was oppressive to have to produce all of the "incident reports"[3] which the subpoenas sought. The contract between the Department and ACM requires ACM to keep "incident reports" in respect of "incidents" in the camp.

The government argued that it was oppressive to require them to produce all the incident reports because, they said, in the 2½ years since Woomera had opened, there were more than 6,000 incident reports filed: roughly 7 incidents every day.

More importantly, the Department and ACM argued that the proposed defence could not succeed as a matter of law. This involved the proposition that no matter how harsh the conditions in Woomera might be, they were nevertheless lawful, and a court could not interfere. Because of the way in which the question arose, the government had to argue, and did argue, that even the harshest conditions of detention imaginable would nevertheless be lawful.

It is interesting to stand back and reflect on the stance taken by the government in that case: innocent people may be held in the harshest conditions imaginable and nevertheless that detention will be lawful. Coupled with the argument in al Masri's case, those same innocent people might be held in unimaginably bad conditions for the rest of their lives and yet it will be lawful.

These are arguments worthy of the legal positivists of the Nazi regime. It is difficult to understand what has happened to the Australian policy that our Federal government is prepared to advance these arguments. The only explanation that occurs to me is that the media are not sufficiently interested in the detail or meaning of what the government is doing under the guise of "border protection".

Let me mention a third case. When a person has ultimately fails in their claim for a protection visa, the Migration Act requires that they be "removed from Australia". In practice, that often means that they will be returned to their country of origin. At the present time there are approximately 200 Iranian asylum seekers in

[3] For the definition of "incident" see Appendix 1.

Australia's detention centres who have been refused protection visas. A number of those people live in genuine terror of the prospect of being returned to Iran. The reason for their terror is not difficult to find. Many of them have embraced Christianity, and apostasy is a very serious offence in Iran; others of them belong to minor religious groups whose members are regularly subjected to terrible treatment in Iran.

I have in my possession a video tape, smuggled out of Iran, which illustrates these things, and incidentally reminds us that most Australians simply cannot imagine the conditions which cause people to flee their country and seek asylum elsewhere. The video is shot in a medium size room. On one side of the room are two men who look like officials. They are reading in a flat, bureaucratic manner from a lengthy document. Keeping apart from them, and some distance away, is a group of five or six people who look as though they may be friends, or members of a family. On the opposite side of the room a man lies on a table, facing the ceiling. For the most part, the camera – handheld and grainy, but with the official Iranian watermark in the bottom right-hand corner – concentrates on the officials and their reading. At one point the camera swings to the family group, who look increasingly distressed and agitated. It swings to the man on the table who also looks distressed and sits up, only to be pulled down again by two large men standing beside him. The camera then concentrates on the officials and their reading until eventually it turns to the man on the table as his eyes are removed with forceps.

I cannot adequately convey the horror of this tape. Its dull bureaucratic banality, coupled with the fact that it is real and not a Hollywood special effect, combine to make it the most shocking thing I've ever witnessed. Apart from this tape, we know that prisoners in Iran are regularly beaten, tortured, mistreated and killed.

An Iranian, whose claim for asylum had been rejected, lives in fear of return to these conditions. He applied to the court for orders preventing the Government from returning him to Iran. The case theory was simple: the power to remove a person from Australia does not go so far as allowing the Government to send him to a place where he faces torture or death. The Government sought to strike out the claim without a trial on the facts. They invited the court to assume the truth of all the facts alleged, and argued that those facts had no legal consequences. On

that footing, the Government argument was this: it does not matter that he will be killed when he is returned; it does not matter that he will be tortured when he is returned, nevertheless the Government has the power and the obligation to return him to the place where that will happen. A government willing to advance such an argument does not deserve to hold office.

Solitary confinement

Officially, solitary confinement is not used in Australia's detention system. Officially, recalcitrant detainees are placed in the Management Unit. The truth is that the Management Unit at Baxter is solitary confinement bordering on total sensory deprivation. I have viewed a video tape of one of the Management Unit cells. It shows a cell about 3 ½ metres square, with a matress on the floor. There is no other furniture; the walls are bare. A doorway, with no door, leads into a tiny bathroom. The cell has no view outside; it is never dark. The occupant has nothing to read, no writing materials, no TV or radio; no company yet no privacy because a video camera observes and records everything, 24 hours a day. The detainee is kept in the cell 23 ½ hours a day. For half an hour a day he is allowed into a small exercise area where he can see the sky.

No court has found him guilty of any offence; no court has ordered that he be held this way. The government argues that no court has power to interfere in the manner of detention.

Pacific Solution

Australia's Pacific Solution is a fraud on the public.

Our government pretends to respect the rule of law, and loudly proclaims the importance of sovereignty. But the Pacific Solution involves a resolute denial of the legal rights of asylum seekers, and it breaches the Constitution of Nauru.

Nauru's Constitution, article 5, forbids detention except in specified circumstances: for example, after conviction for an offence, or whilst awaiting trial for a serious offence where bail is not appropriate. The exceptions do not justify the detention of the hundreds of asylum seekers who have been taken there against their will.

The Australian government knows that the asylum seekers are detained on Nauru. No competent lawyer could believe that the detention is valid under Nauru's Constitution. Rather, they avoid acknowledging that the asylum seekers are

detained. This must be news to the asylum seekers themselves, who are strictly confined within the camps in which they are held.

As it turns out, it is all done by a legal trick. Article 5 of the Constitution permits a person to be detained "for the purpose of effecting his expulsion, extradition or other lawful removal from Nauru." Asylum seekers are taken to Nauru against their will and are held in order to expel them again. Australia pays Nauru a great deal of money for this process. Stranger still, the asylum seekers are given a visa, although they are not informed of the fact. A condition of the visa is that they must stay in one of the detention camps. It does not require much wit to see that if the Constitution forbids detention, a visa which imposes detention cannot be valid. Nevertheless, on 27 May 2003 the Chief Justice of Nauru ruled these strange arrangements to be valid, with the result that innocent people are detained for years on Nauru despite its Constitutional guarantees. Even allowing for the fact that the detainees had no competent legal representation, the judgment is a disgraceful piece of work: a veil too thin to hide the corruption it justifies.

Nauru's Constitution also guarantees access to legal help. The asylum seekers on Nauru have asked for legal help, but it has been refused. Pro bono lawyers from Australia have been refused permission to go to Nauru. By this device, the Australian government has isolated the asylum seekers from every legal system in the world. They might just as well be in Guantanamo Bay.

There is no public disquiet at these things: the Australian public, it seems, has adjusted to the idea of imprisoning innocent people.

The Howard government conceals the worst aspects of on-shore mandatory detention by putting most of the detainees in remote desert camps. They conceal the worst features of the Pacific Solution by making it virtually impossible for Australians – especially lawyers or journalists – to visit Nauru or Manus Island.

Morality and law

In 2002, along with more than 80 other nations, Australia acceded to the Rome statute by which the International Criminal Court was created. The court is the first permanent court ever established with jurisdiction to try war crimes, crimes against humanity and crimes of genocide regardless of the nationality of the perpetrators and regardless of the place where the offences occurred.

As part of the process of implementing the International Criminal Court regime, Australia has introduced into its own domestic law a series of offences which mirror precisely the offences over which the International Criminal Court has jurisdiction. So, for the first time since Federation, the Commonwealth of Australia now recognises genocide as a crime and now recognises various war crimes.

The Australian Criminal Code also recognises various acts as constituting crimes against humanity. One of them is of particular significance in the present context. It is as follows:

"268.12 Crime against humanity – imprisonment or other severe deprivation of physical liberty

(1) A person (the perpetrator) commits an offence if:

(a) the perpetrator imprisons one or more persons or otherwise severely deprives one or more persons of physical liberty; and

(b) the perpetrator's conduct violates article 9, 14 or 15 of the Covenant; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

(The Covenant referred to is the International Covenant on Civil and Political Rights, the ICCPR.)

The elements of these offences are relatively simple:

- The perpetrator imprisons one or more persons;
- That conduct violates Article 9 of the ICCPR;
- The conduct is committed knowingly as part of a systematic attack directed against a civilian population.

Australia's system of mandatory, indefinite detention appears to satisfy each of the elements of that crime. Mr Ruddock and Mr Howard imprison asylum seekers. The United Nations Working Group on Arbitrary Detention has found that the system violates Article 9 of the ICCPR. Their conduct is intentional, and is part of a systematic attack directed against those who arrive in Australia without papers and seek asylum - a representative of the International Criminal Court has

expressed privately the view that asylum seekers as a group can readily be regarded as "a civilian population". They are an identifiable civilian cohort.
If moral arguments have no purchase, it remains the fact that our government is engaged in a continuing crime against humanity when assessed against its own legislative standards.

How it might be

The sad fact is that neither truth nor moral arguments get much oxygen in Australia these days. If the Universal Declaration of Human Rights were being debated now, Australia would oppose it. Howard resents interference from the international community, just as Mr Ruddock resents interference from the Courts.
We have fallen a long way. We have squandered the legacy of our past. Our Prime Minister, walks in the footsteps of Robert Menzies and calls himself a Christian, but he is immoral, hypocritical, un-Christian and – as an enthusiastic proponent of mandatory detention - guilty of crimes against humanity when judged by his own laws. He must take personal responsibility for the Pacific Solution, which is one of the most disgraceful and cynical enterprise ever undertaken by an Australian government.
Mr Ruddock clings to his membership of Amnesty International, in the face of sustained criticism from that organisation; he chants the Liberal mantra of family values whilst locking families of innocent people behind a 9000 volt "courtesy fence" at Baxter. He pretends to be a Christian, while the leaders of all the Christian churches in Australia condemn his policies. He says that we do not have solitary confinement in detention centres, but if we do the Courts must not interfere; that we must send terrified people back to torture or death; that we can lock them up for the rest of their lives if need be.
Other members of the Parliamentary Liberal party hide behind Howard and Ruddock, accepting the guilty benefits of their Party's shame.
In the epilogue to his 6-volume History of Australia, Manning Clark wrote:
"This generation has a chance to be wiser than previous generations. They can make their own history. With the end of the domination by the straiteners, the enlargers of life now have their chance. ... It is the task of the historian and the myth-maker to tell the story of how the world came to be as it is. It is the task of the

prophet to tell the story of what might be. The historian presents the choice: history is a book of wisdom for those making that choice."

Australia has made a choice with terrible consequences. We have chosen lies instead of honesty; self-interest ahead of human rights; hypocrisy instead of decency. We have chosen a government which shows contempt for human rights, whilst posturing as champions of decency and family values; a government which has made us relaxed and comfortable only by anaesthetising the national conscience.

None of this would long survive if we had an Opposition worthy of the name. In the years since Chifley promoted the great human rights conventions and spoke of the light on the hill, the Labor Party has disappeared from the moral map. Too timid to be decent; too frightened to admit mistakes, it has vanished at the time when it might have urged compassion and honour and decency. Don Dunstan would have wept to see his ideals – his party's ideals, his country's ideals - so betrayed.

Appendix 1

Detention Contract

Extract from contract between ACM and Department of Immigration and Multicultural Affairs

"**"incident"** ... means a variation from the ordinary day to day routine of a facility which threatens, or has the potential to threaten, the good order of the facility, or, which threatens the success of escort/transfer/removal activities, or may impact on immigration processing, including but not limited by:

- escape from lawful detention or attempted escape
- attempted self harm
- hunger strike in excess of 12 hours
- solitary confinement of detainee
- transfer of detainee/s to another facility, state institution
- indications of rising tension within a facility, eg prior/post major removal activity, prior/post visa decision advice
- approaches to staff by, or presence at the facility of, media representatives
- industrial action by staff
- approaches to staff by, or presence at the facility of, media representatives

.....

"major incident/disturbance" ... means an incident or event which seriously affects the good order and security of the facility or which threatens the success of escort/transfer/removal activities, including but not limited by:

- medical emergency eg serious accident, serious self inflicted injury, infection contamination of facility
- serious assault eg sexual assault, assault causing serious bodily harm
- riot
- hostage situation
- hunger strike (of over 24 hours)
- sit-in, barricade (if not dealt with within 4 hours)
- rooftop demonstration
- food poisoning/epidemic
- bomb threat
- failure of mains system/power failure; electronic security system

- hazardous materials contamination
- fire, storm and tempest
- damage caused to facility

Appendix 2

The Constitution of Nauru

Protection of personal liberty

5.(1.) No person shall be deprived of his personal liberty, except as authorised by law in any of the following cases:-

(a) in execution of the sentence or order of a court in respect of an offence of which he has been convicted;

(b) for the purpose of bringing him before a court in execution of the order of a court;

(c) upon reasonable suspicion of his having committed, or being about to commit, an offence;

(d) under the order of a court, for his education during any period ending not later than the thirty-first day of December after he attains the age of eighteen years;

(e) under the order of a court, for his welfare during any period ending not later than the date on which he attains the age of twenty years;

(f) for the purpose of preventing the spread of disease;

(g) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community; and

(h) for the purpose of preventing his unlawful entry into Nauru, or for the purpose of effecting his expulsion, extradition or other lawful removal from Nauru.

(2.) A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention and shall be permitted to consult in the place in which he is detained a legal representative of his own choice.

(3.) A person who has been arrested or detained in the circumstances referred to in paragraph (c) of clause (1.) of this Article and has not been released shall be brought before a judge or some other person holding judicial office within a period of twenty-four hours after the arrest or detention and shall not be further held in custody in connexion with that offence except by order of a judge or some other person holding judicial office.

(4.) Where a complaint is made to the Supreme Court that a person is unlawfully detained, the Supreme Court shall enquire into the complaint and, unless satisfied that the detention is lawful, shall order that person to be brought before it and shall release him.